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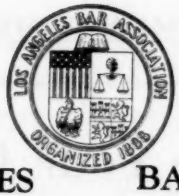

THE LOS ANGELES BAR ASSOCIATION

BULLETIN

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Trust Deeds and Trust Deed Legislation

POPULARITY OF DEED OF TRUST AS AGAINST MORTGAGE. DIFFERENCE IN FORECLOSURE PROCEDURE. ANALYSIS OF PENDING BILLS AFFECTING DEED OF TRUST

By R. L. McNitt, of the Los Angeles Bar

While the general use of the Deed of Trust for the purpose of security, in lieu of a Mortgage, is comparatively recent and, therefore, the laws applying to them are still in a formulative state, the effects or rights conveyed under such instrument are as old as the Mortgage itself. The Deed of Trust as it is used today resembles somewhat the old common law mortgage which was a conveyance of the fee with a defeasance in which the grantee agreed to reconvey if the grantor paid his debt on the day due; if he did not, title vested absolutely in the grantee and he kept the property. It was not until later that equity allowed a period of redemption.

Though the specific code section in California, (Sec. 2924 Civil Code), defining the use of deeds of trust was not adopted until 1917, it is evident that the framers of the California Constitution anticipated the creation of such an instrument, as a conveyance to secure an indebtedness, because Article XIII, Sec. 1 of the Constitution, as originally adopted in 1879, contained this clause: "The legislature may provide, except in the case of credits secured by mortgage or trust deed, * * *." The California legislature had also recognized deeds of trust as an existing mode of securing loans, having mentioned them in numerous statutes.

It has been said, however, that deeds of trust are an anomaly in the California system, being inconsistent with the policy of the State requiring all forced sales to be subject to redemption. The decisions of the Supreme Court of the State have, however, consistently upheld the deed of trust as an exception to the rule, and these decisions have been so long acquiesced in as to become a rule of property.

Reason for Popularity

The reason for the popularity of the deed of trust in the State of California as a mode of securing loans may lie in the distinction between mortgages and deeds of trust. Primarily, the deed of trust differs from a mortgage in that no statutory right of redemption exists under a deed of trust. A mortgage with power of sale has, however, the same provisions so that the advantage in the use of a deed of trust lies in the further distinctions.

The mortgage constitutes a mere lien upon the property, the mortgagor retaining the legal title, while under a deed of trust the grantor is divested of legal title. The importance of this distinction may be noted in the case where a recovery on a note secured by a mortgage has been barred by the statute of limitations, in which case all rights under the mortgage are lost; whereas, under the deed of trust the security is preserved by reason of the legal title being in the trustee, even though recovery on the note secured by the deed of trust is barred. So also, where a mortgage is placed upon homestead lands and the mortgagor dies before the debt comes due, the mortgagee must present his claim to the executor or administrator of the estate of mortgagor or lose his rights under the mortgage note. It is not necessary for the holder of a deed of trust to present a claim in such a case in order to preserve the trustee's right of sale.

It has been said that the rule requiring the holder of a note secured by a mortgage to first exhaust the security before proceeding against the mortgagor personally is purely statutory and does not apply to the holder of a note secured by deed of trust. The California decisions are not clear upon this point with reference to deeds of trust though the general practice has been to follow the mortgage rule in the matter of obtaining deficiency judgments upon a note secured by a deed of trust.

A further distinction under the present mode of procedure is that the transferee of a note secured by a mortgage must record his assignment before asserting rights thereunder. There is no statutory provision requiring recordation of an assignment of a note secured by a deed of trust before exercising the power of sale thereunder.

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STATEMENT OF THE OWNERSHIP, MANAGEMENT, CIRCULATION, ETC., REQUIRED BY THE ACT OF CONGRESS OF AUGUST 24, 1912,

Of Los Angeles Bar Association Bulletin published monthly at Los Angeles, California for April 1, 1931.

State of California, County of Los Angeles ss.

Before me, a Notary Public in and for the State and county aforesaid, personally appeared J. M. Boyd, who, having been duly sworn according to law, deposes and says that he is the Business Manager of the Los Angeles Bar Association Bulletin and that the following is, to the best of his knowledge and belief, a true statement of the ownership, management (and if a daily paper, the circulation), etc., of the aforesaid publication for the date shown in the above caption, required by the Act of August 24, 1912, embodied in section 411, Postal Laws and Regulations, printed on the reverse of this form, to wit:

1. That the names and addresses of the publisher, editor, managing editor, and business managers are:
Publisher Los Angeles Bar Association, 1126 Rowan Bldg., Los Angeles, Calif. Editor Birney Donnell, 511 Citizens Nat'l. Bank Bldg., Los Angeles, Calif. Business Managers J. M. Boyd, 241 E. 4th St., Los Angeles, Calif.

2. That the owner is: (If owned by a corporation, its name and address must be stated and also immediately thereunder the names and addresses of stockholders owning or holding one per cent or more of total amount of stock. If not owned by a corporation, the names and addresses of the individual owners must be given. If owned by a firm, company, or other unincorporated concern, its name and address, as well as those of each individual member, must be given.)
The Los Angeles Bar Association, an unincorporated association, composed of members of the Los Angeles City and County Bar. Address: 1126 Rowan Building, Los Angeles, California.

3. That the known bondholders, mortgagees, and other security holders owning or holding 1 per cent or more of total amount of bonds, mortgages, or other securities are: (If there are none, so state.) None.

4. That the two paragraphs next above, giving the names of the owners, stockholders, and security holders, if any, contain not only the list of stockholders and security holders as they appear upon the books of the company but also, in cases where the stockholder or security holder appears upon the books of the company as trustee or in any other fiduciary relation, the name of the person or corporation for whom such trustee is acting, is given; also that the said two paragraphs contain statements embracing affiant's full knowledge and belief as to the circumstances and conditions under which stockholders and security holders who do not appear upon the books of the company as trustees, hold stock and securities in a capacity other than that of a bona fide owner; and this affiant has no reason to believe that any other person, association, or corporation has any interest direct or indirect in the said stock, bonds, or other securities than as so stated by him.

5. That the average number of copies of each issue of this publication sold or distributed, through the mails or otherwise, to paid subscribers during the six months preceding the date shown above is ———. (This information is required from daily publications only.)

J. M. BOYD.
(Signature of editor, publisher, business manager, or owner.)

Sworn to and subscribed before me this 30th day of March, 1931. BLANCHE B. HALDERMAN.
(SEAL) (My commission expires Jan. 5, 1935)

The chief distinction, however, is in the difference in the procedure for enforcing or foreclosing of a mortgage and deed of trust. A mortgage may be foreclosed in a court even if a power of sale be contained therein. Except in a few instances, however, it is the general opinion that the holder of a deed of trust does not have the right to resort to the courts to foreclose the same. In order to obviate the doubt that now exists in that regard and make certain that the right to foreclose a deed of trust by a proceeding in court is proper is the purpose of at least one of the bills now pending before the legislature, which will be hereafter discussed.

Pending Legislation

During the last two or three years there has been a decided trend from the use of the Mortgage to the Trust Deed as a form of security, probably because of the fact that the Trust Deed is more quickly foreclosed and there is no provision for an equity of redemption. The borrower of money, being at the mercy of the lender, has been obliged to take and execute the form of security required by the lender who usually gives no choice in the matter. The present economic conditions have, therefore, resulted in a great deal of consideration being given to the present status of the Trust Deed with the result that there are pending before the present legislature a large number of bills seeking to change the law with reference to the foreclosure of these instruments. In order that the subject matter may be more adequately presented, an analysis of the pending bills affecting trust deeds may not be amiss.

Several of the bills pending before the legislature have to do with the special matter of "Notice of Sale."

A.B. 297, introduced by Assemblyman Houser, if adopted, would require notices of sale of property under execution or under Trust Deed foreclosure to be posted or published in the city, if the property is located within the city, and if not, then in the township in which the property is located.

A.B. 1259, introduced by Assemblyman Jespersen, if adopted, would require that notices of sale under deeds of trust must state the amount claimed by the holder of the deed of trust. It would also require sales under deeds of trust to be conducted in the county where the property is located, and where several parcels are to be sold that they be sold separately if possible to do so.

A.B. 419, introduced by Assemblyman Arnold, would require twelve months' notice before any sale under a deed of trust can take place; while

The Clark Bill

A.B. 1471, introduced by Assemblyman Clark, would strike out all provisions requiring trustees to record notice of sale under a deed of trust.

There would seem to be considerable merit to the requirements that notices of sale must be posted or published in the city or township in which the property is situated, as well as in the requirement that notices of sale must state the amount claimed by the holder of the deed of trust. A sale under deed of trust should also take place in the county where the property is situated. The suggested striking out of provisions requiring recordation of notice of sale in the event of an election to foreclose under the power of sale contained in the deed of trust does not seem, in the opinion of the writer, to be well founded.

With reference to the giving of notice of default, Assembly Bill — A.B. 503, introduced by Assemblyman Crist, such bill would require that notice of default under a deed of trust must identify the trust deed by giving the book and page where the same was originally recorded. This amendment should serve to further identify the instrument being foreclosed, and would seem to merit the consideration of those interested in remedying the present trust deed situation. The same is true of Assembly Bill — A.B. 690, introduced by Assemblyman Jones, providing for the recordation of assignments of beneficial interests under deeds of trust, and providing that such recordation shall act as constructive notice to all persons.

Redemption After Sale

Many of the bills introduced have to do with the subject matter of redemption after sale. Assembly Bill A.B. 1080, introduced by Assemblyman Cobb, and A.B. 694, introduced by Assemblyman Stockwell, provide for a redemption period of twelve months, putting the trust deed upon the same basis as a mortgage.

A.B. 292, introduced by Assemblyman Honnold, would permit judgment debtors or junior encumbrancers to redeem from sales under trust deeds, while Assemblyman Honnold's A.B. 1030 would permit judicial

sales under trust deeds with a redemption within ninety days from the date of sale. In that connection, Assemblyman Honnold is also sponsoring A.B. 1029 cutting down the time for redemption on mortgages from twelve to four months. The merits of these bills providing for a period of redemption will be hereafter discussed.

Two bills pending before the legislature, A.B. 907, introduced by Assemblyman Lyons, and S.B. 539, introduced by Senator Bush, virtually provide for a judicial sale. Assemblyman Lyon's bill also specifically provides for the appointment of a receiver as an incident to a foreclosure by judicial sale. Senator Bush's bill requires the fact of default under a deed of trust to be determined only in the Superior Court, and requires that the court must fix the trustee's fees.

Effect of Honnold Bill

A.B. 719, introduced by Assemblyman Honnold, if adopted, would make all transfers of property, whether in trust or not, as security for performance of another act, be deemed a mortgage and thus virtually wipe out the deed of trust commonly used, which would in effect mean that there would have to be a judicial sale in every instance where a security was given whether in the form of deed of trust or mortgage.

There is also pending before the legislature a new general law to be known as the "Public Trustee Act," creating the office of public trustee who is to be named trustee in all deeds of trust and conduct sales thereunder.

Assembly Bill 1028 provides that no trustee shall receive any compensation for foreclosing a deed of trust, and that the cost and expense of such foreclosure shall be paid only to the attorney appointed by the beneficiary at the time of giving notice of default.

Assembly Bill 542, introduced by Assemblyman Sewell, Chairman of the Judiciary Committee of the Assembly, provides that beneficiaries under deeds of trust may cause foreclosure of the same to be had by suit pursuant to the provisions now existent for the foreclosure of mortgages, but that the sale shall be conducted without right of redemption. This bill was introduced by Assemblyman Sewell at the request of several attorneys interested in this subject matter, and due to the wide publicity that has been given to the bill many suggestions have been received by the writer with reference to what should be done in the way of remedying our existing law with reference to foreclosure of deeds of trust.

Attorneys Favor Court Action

A survey of the various suggestions made by lawyers from different parts of the State, in letters written in favor of Assembly Bill 542, shows that there is a definite opinion to the effect that deeds of trust should be subject to foreclosure by Court action. Several attorneys have insisted that the bill now pending does not go far enough and that this State should join some other states in the Union in requiring that all foreclosures of deeds of trust, as well as of mortgages, shall be by Court action without any alternative in the beneficiary or trustee. In connection with these suggestions there also was made the suggestion that in this event, foreclosure actions be given the right of way in our courts the same as injunction and unlawful detainer proceedings. Another suggestion lies in the fact that a receiver is often an incident to a mortgage foreclosure while it is uncertain as to whether or not there may be a receiver as an incident to a proceeding in connection with a foreclosure of a deed of trust. As already indicated, there is a bill pending before the legislature to provide for receiverships in such proceedings. It is submitted that if Assembly Bill 542 is adopted, a receiver may be had as an incident to a foreclosure proceeding of a deed of trust as the bill provides that the deed of trust may be foreclosed according to the rules with reference to foreclosure of mortgages, and which would invoke the equity jurisdiction of the Superior Court in the same manner as in the foreclosure of mortgages. Upon a proper showing, therefore, there could be a receivership as an incident to a foreclosure of a deed of trust.

That there should be a period of redemption in the event of the foreclosure of a deed of trust was also the insistent suggestion of many interested in this general subject matter. Periods of redemption vary from ninety days to nine months. Those who made the suggestion that there should be a period of nine months equity of redemption did so with the belief that this would equalize the deed of trust and mortgage in that there would be a notice of default filed in the usual manner requiring three months' period of time to elapse before the foreclosure could commence. It is pointed out in this connection, however, that this is an erroneous assumption as the notice

of default required to be recorded three months in advance of notice of sale under foreclosure is the alternative method provided under the power of sale contained in the deed of trust itself, and this time would not be available in connection with a foreclosure in a judicial proceeding.

Equity of Redemption

While there is considerable merit in the suggestion that there should be an equity of redemption in case of foreclosure of a deed of trust, sponsors of A.B. 542 feel that the opposition which would develop in the event it were attempted would result in the defeat of the proposed amendment. In order to meet, in part, that criticism, as well as the criticism that it is possible to shorten the time of foreclosure in case of judicial sale in some counties, an amendment has been prepared which provides that a writ of enforcement shall not issue until sixty days after judgment. It is believed that this provision, coupled with the time that will of necessity be required in order to obtain judgment in the normal course of events, will meet the objections that an action in court may actually foreclose one out of his property in less time than under the power of sale method, now provided for, and yet afford every opportunity to present the other issues in the Court that are possible to be presented in the event of a foreclosure by judicial sale. The same objection would undoubtedly present itself if A.B. 292 and A.B. 1029 were to be seriously considered by the legislature.

Some criticism was directed at the bill as originally drafted upon the ground that the trustee as well as the beneficiary should be permitted to bring the action. Certain it is, in the event of foreclosure by judicial proceeding, that the trustee must be made a party to the suit. Every lawyer would undoubtedly join the trustee as a party defendant. There would seem to be no objection, however, to providing that the beneficiary or the trustee may bring an action, and an amendment to A.B. 542 is being prepared to so provide. It is believed that this will withdraw a considerable amount of objection that was otherwise directed at the bill.

It should be noted that Assembly Bill 542 does not undertake to change the substantive rights of the parties to a deed of trust, the proposed bill providing that sale under foreclosure suit shall be "without right of redemption." The chief advantages of the bill are that in numerous cases it is necessary under the present law to conduct first, a trustee's sale, and then file a court proceeding to litigate claims against the property. In many instances, it is necessary to bring an unlawful detainer action. In other instances it is necessary to bring a quiet title action. If Assembly Bill 542 is passed the beneficiary may, or the trustee may, by court proceeding litigate the title in one proceeding with a great saving of time and expense, have a receiver appointed to collect rents pending a sale of the property if grounds for appointment of a receiver otherwise exist, as well as conduct the sale and obtain a writ of assistance or enforcement to recover possession of the property. Another benefit from the amendment will be the fact that there will always be assurance that a proper notice is given and that no unjust advantage is taken where the sale is had pursuant to a decree of Court. The Court, of course, will have jurisdiction to fix fees and costs which may, in some instances, result in a saving to the borrower who is so unfortunate as to have to face foreclosure proceeding. The lender may also obtain in the same proceeding a deficiency judgment, saving a separate proceeding for that purpose.

As stated in the letter sent out to the members of the State Bar in support of this bill, it is believed that the merits of this proposed legislation will appear to all lawyers. It will benefit litigants by providing a procedure whereby in one action sale can be had, writ for possession obtained, deficiency judgment entered and all questions as to priority of liens determined. Great savings of time and expense can be effected in situations in which the proposed relief would be invoked.

Support of this measure by lawyers is, therefore, urged upon the ground that it will benefit their clientele and that it will enable our profession to compete with non-professional agencies in offering effective service to the public.

The President's Letter to the Members of the Los Angeles Bar Association

Fellow Members:

Since my last letter was written, most if not all of the committees of the Los Angeles Bar Association have been appointed. Doubtless the appointments do not meet with everyone's entire approval. When selections must be made from a group of approximately twenty-five hundred men and women, it is hardly possible to avoid mistakes both of commission and omission. However, certain things were kept in mind in making the appointments. Among other things, a very definite effort was made to bring new blood into the committee work while at the same time retaining enough of the old members on each committee to assure a continuity in the work. An effort was also made to give proper representation to the affiliated associations. It is our sincere hope and belief that the committees are representative of the membership as a whole and that they will prove efficient.

The last monthly meeting of the Association was, I believe, thoroughly enjoyed by those present. Our speaker very happily combined entertainment with instruction. The Pomona Glee Club was delightful and the impromptu debate which concluded the meeting provided interest and some healthy excitement.

The Coming Meeting

The next monthly meeting will be no less interesting and perhaps just as stimulating. I have been taken into the confidence of the Program Committee and while I am not permitted at this time to announce either the name of the speaker or his subject, I can give you my assurance that those who attend will have the opportunity of listening to one of the most brilliant speakers that it has ever been my privilege to hear. In your own interest, reserve the evening of April 23rd.

Pending Legislation in Which We Are Interested

Your Association is interesting itself in a number of the bills before the legislature which relate to the administration of justice. I cannot refer to all of these without unduly extending this letter. However, it may be noted that the Association has gone emphatically on record as favoring in principle those bills which have for their purpose an increase in the number of Superior Court judges for Los Angeles County, an increase in the salaries of the Superior Court judges of this county, and an additional division of the Second District of the District Court of Appeal. Then there are various bills which your Committee on Criminal Law and Procedure has sponsored and caused to be introduced and which have for their purpose the correction or improvement of certain provisions of the penal

statutes. There are also bills which have been approved or advocated at the instance of your Committee on Legal Education and your Committee on Constitutional Rights. For example, the last named committee has advocated, and the Board of Trustees has approved, an amendment to Section 1102 of the Penal Code to prohibit the introduction into evidence of information secured unlawfully or things taken in unlawful seizure.

These matters are mentioned in passing because I believe that many members of the Association do not realize that constant and useful work is going forward at all times through the efforts of your committees and your Board of Trustees. Many of you participate in committee work but many do not, and all of you should know that the Association is active and useful not only in behalf of the lawyers but also in the interests of the public.

THE PLEBISCITE ON CANDIDATES

The plebiscite has been taken and a sincere and dignified effort is being made to inform the voters concerning the judgment expressed by the members of the Association relative to the candidates best qualified for election to the Municipal Court. Our critics insist upon construing our effort to give advice as an attempt to dictate the selection of judges. We are entirely conscious that the charge is wholly unfounded and unfair and we believe that the great majority of the voters will value the advice which we offer.

Sincerely yours,

IRVING M. WALKER.

NOTICE OF MEETING

◆

The Los Angeles Bar Association

will meet at the

ALEXANDRIA HOTEL

On April 23rd, 1931 » » 6 p. m.

The Parole System in Misdemeanor Cases

PERMITS UNDOING OF ALL THAT COURT HAS DONE. FAILS TO PROMOTE ORDERLY PROCESSES OF LAW IN CORRECTION OF PETTY OFFENDERS, BUT AT TIMES INTERFERES WITH THEM

By James H. Pope, Judge of Los Angeles Municipal Court

In discussing the use of the parole in misdemeanor cases it should be stated at the outset that this article is not intended as a criticism of the personnel of the Board of Parole Commissioners in this City and County.

It is immaterial who may comprise the Board, for under the present system of administering the parole law in misdemeanor cases, the same results will follow. It is, therefore, the methods used,—the system of granting parole—that should be discussed and corrected.

The 1909 legislature passed an Act Creating Boards of Parole Commissioners in each County to hear and act upon applications for parole made by prisoners convicted of misdemeanors. It provides that the District Attorney and Sheriff of the County, with the Chief of Police, or other chief police officer of the County seat, shall constitute each Board. It gives each Board the power to "make and establish rules and regulations" under which any prisoner confined in the County jail may, after judgment of conviction, be allowed to go upon parole outside any jail, but under the control of the Board.

Thus was created a non-judicial body with very broad discretionary powers in very general terms. The effect has been the development of a legal creature which has not only failed to assist and promote the orderly processes of law, but has, at times, interfered with them. It is not to be denied that in numerous instances the benign effect intended to be accomplished has been realized; but in many other cases it has been injurious to the orderly administration of the criminal law. In some cases it has even contributed to the disrespect for criminal law.

The principles and theory of parole have not developed as rapidly as other branches of the law because the subject has attracted only limited attention. Its operations in each particular case has been confined to the man in jail, a few relatives and friends if he had any, a few police officers, and the members of the particular board of parole commissioners, all giving brief attention to the matter, except of course, the prisoner and his relatives and friends who began giving attention to the subject as soon as the prison door closed behind him.

The Parole Board Procedure

As has been pointed out herein, the law provides that the District Attorney and the Sheriff of the County together with the Chief of Police, or chief police officer of the County seat, shall comprise the Board of Parole Commissioners.

Speaking historically, these officers, at least in this County, have found that their regular duties make it practically impossible for them to attend meetings of the Board. When Mr. Woolwine was elected district attorney in 1916, he called a meeting of the Board and requested the other members to attend regularly. Thereafter he found that his own duties prevented his attendance. The sheriff and the district attorney encountered similar difficulties. Consequently each member of the Board designated some deputy to attend in his place.

Between 1916 and 1923 the writer attended many meetings of the Board and never saw any of the officers designated by the legislature to act as a Board, in attendance. On one occasion one deputy from one of the offices passed upon approximately thirty applications for parole in less than an hour, granting some and denying others. The writer afterward inquired of this particular deputy the reasons for some of the orders granting or denying parole, upon which but few if any proceedings had taken place. The deputy frankly replied: "I had my orders."

At the legislative session of 1929 the writer spent some time in Sacramento seeking to have established an orderly procedure, to be defined by the legislature which would include a definite statement of law giving grounds upon which paroles should be granted, and providing for the manner of hearing; so that any prisoner who could make a definite and legal application for parole might have an opportunity to have the

same presented and heard in an open and public proceeding. The reason advanced for this proposed change was that, in effect, a parole was a conditional modification of a judgment which changed a definite commitment to probation, which the court in passing judgment had previously denied.

The legislature subsequently amended the statute but only to the extent of requiring boards of parole to prescribe rules and regulations in writing, with their reasons therefor, and then permitted the officers designated as members of the Board, to name deputies to hear the application.

Present Statute Criticised

The particular exceptions which this writer takes to the statute are as follows:

It permits a body to make its own rules, or to change the rules at will, or to waive the rules when it sees fit, or to have no rules at all.

To permit officers by reason of their occupancy of a particular office to name deputies to act in their places, is to do away with the responsibility which otherwise would attach for an act, while at the same time it requires the deputy to act in accordance with particular instructions given him by his superior, who is not present at the time when the discretion to grant or deny parole is exercised.

There is no provision of the statute which requires the individuals who act as members of the Board to give any consideration to the proceedings which have taken place at the time of trial, where all the rules of law and procedure have been carefully followed to reach a conclusion. From this arise several other difficulties; these may be summarized as follows:

1. Persons convicted of offenses may urge as reasons for parole facts which have been found to be untrue at the trial;

2. Individuals are encouraged to present in a loose and informal way to any member of the Board at any time and place, any matter which they believe, if accepted, would effect the release of the individual confined;

3. Persons designated as deputies to pass upon applications may have facts presented to them before judgment has been pronounced which prompt them to call upon the judge presiding at the trial to suggest the manner of disposition of the case, and if that is not done a parole can be granted immediately after judgment is pronounced; and the judgment will therefore be without effect;

4. If persons designated to act disagree with the trial Court in its judgment denying probation, and committing the prisoner to confinement, they may nullify the judgment by immediately granting parole.

The possibilities are limited only by the number of persons seeking the order of parole. Illustrations of past occurrences could be continued over much space.

My own experience leads to the conclusion that persons seeking paroles will resort to all manner of devices, at any and every possible opportunity, to prevail in any manner upon the individuals given the authority to make the orders which they seek.

Without definite order, method and system to which all who have the power to act must look for the source of authority and manner of exercising it, many evils which conflict with orderly correction will, and do arise.

COOPERATION BETWEEN THE PRESS AND THE BAR

That there is need of more friendly relations between the press and the judicial institutions, was stressed in the report of the Committee of the American Bar Association having the subject in charge, submitted at Chicago last summer. This committee says:

"We believe that the process of adjustment and development of proper and desirable relations between the press and the courts rests to a great extent within the control of the presiding judges in each of the courts; that the matter is of great importance in its bearing on public opinion, on the status of the judiciary in public esteem, and therefore on the preservation of the judicial authority as an instrument of the government; and consequently we recommend that the subject should have the serious consideration, and all advisable action, of the Judicial Section of the American Bar Association.

"The committee should be continued and maintained."

"In the Seats of the Mighty"

SCATHING DENUNCIATION BY FORMER JUDGE OF SUPREME COURT OF NEW YORK OF METHODS OF SELECTING JUDGES IN NEW YORK CITY. FIFTY PERCENT DECLARED UNFIT. EMINENT NEW YORK LAWYERS NO LONGER SEEK OFFICE

Under the title "In the Seats of the Mighty," William N. Cohen, former judge of the New York Supreme Court, and now Chairman of the Committee on Courts of Superior Jurisdiction of the Association of the Bar of New York City, contributes an article to the *Journal of the American Judicature Society*. The BULLETIN reprints here parts of Mr. Cohen's sensational article because of its character and wide interest.

"The public has been stirred lately by reports of the acts and doings of certain judges of the Magistrates' Courts of New York City," says Mr. Cohen. "These courts are presided over by individuals who were not selected for character, judicial fitness, or experience, but as a reward for political activities or in repayment of contributions for nominations; these activities are manifested as district leaders, as officers in political organizations and otherwise, but always in some field having political power and controlling votes. To such lengths has this system advanced that when a Catholic, Jew or Italian retires from judicial office, the parties submit names, exclusively, of Catholics, Jews, or Italians for the successorship as though the office, as of right, belonged to some religious denomination or race without regard to qualifications for the office.

"The same system of selection, resulting in the scandals recently aired, is applied even to the selection of candidates for the highest court of original jurisdiction of this state, namely, the Supreme Court. This article is limited to the judges of that court in the first department as it is only in that department that the writer is sufficiently familiar with the facts to warrant the statements herein contained. To the man in the street there is little or no difference between a judge of the Magistrates' Court and the Justices of the Supreme Court."

Mr. Cohen's article says that the outcome of this method of selecting judges of the Supreme Court is that in learning and efficiency the judges of the first department have markedly deteriorated in the last two decades.

JUDGES LACKING IN DIGNITY. SALARY OF $25,000 TOO MUCH FOR SERVICES RENDERED

"The salary of this office is now to be $25,000 a year. In fixing it at this sum, it has been argued that this amount is requisite in order to insure the dignity which is commensurate with the office of a judge. There is so little dignity among these judges at the present speaking that there ought to be a decided reduction in salary, if dignity be the determining factor.

"The courts are in session nine months of the year; five court days a week. The judges do not sit on Saturdays, Sundays or legal holidays. There are twenty-five parts in only one of which sessions are held on Saturdays. Assuming, rather violently, that these judges work on days other than when the court is in session, we have practically 180 to 200 working days in the year. The hours are from ten until one and from two until four — a five-hour day. On many occasions this time is shortened by the whim or convenience of the sitting judge. Occasionally there is no work done even on a work-day; as when, forsooth, a political leader recently gave his daughter in marriage, out of eighteen parts where jury trials are held, fourteen adjourned for the day, or half a day, in order to attend the ceremony. On some occasions the working time is lengthened by the failure of jurors to agree, so that taking the average working hours of the judge, his salary is more than $125 per working day — more, far more, than the majority of judges now sitting in the first department could earn in the legitimate practice of their profession, if ever they practiced it.

Judges Rely on Signal from Clerk

"Hence the desire for the job rather than for its dignity and power; hence, also, the appointment and selection of candidates whose fitness is almost nil. So marked, indeed, has this unfitness become that there are known instances where judges rely on a signal from the clerk in sustaining or overruling an objection. This is in the open. In their chambers they borrow stereotyped charges and read them as a boy learning to read stumbles along and makes no impression on the hearers. * * *

"Besides the salary there are gifts and favors in the hands of the judge. In cases where any discretion is involved, such as frequently occurs in applications for injunctions and appointment of referees and receivers, what can be expected of judges owing their appointments to political services except a determination in favor of friend or political crony?

Results of the Ignorance of Judges

"How does this ignorance and reciprocity work out? In the first place, a trial, which before a competent judge would last an hour or two, would be drawn out into two or three days, before an incompetent judge. Moreover, in the first instance the trial would be definitely determined. In the second, it would, in all probability, end in a disagreement. Result: another trial; more time in the occupancy of the court room; more time wasted for jurors; more expenditure for lawyers, and in salaries of attendants, stenographers and clerks. * * * And the worth of these results is, to the poor litigant, an absolute denial of justice. For often he may not have the funds to proceed with a second trial of the same issue by reason of a disagreement at the first trial. Assuming an agreement, with an ignorant judge the chances of reversal in the appellate court are increased.

Evils Well Known, Yet Are Not Aired

"The evils which have just been outlined are well known to almost every member of the bar who practices in the courts — so much so that without a desire to proceed before a judge of one's own selection, but with an honest purpose to proceed before a judge who knows some law, lawyers will wait and wait, and postpone and postpone until some competent judge will preside at a trial involving intricate questions of fact or of law.

"Why then, it may be asked, is the bar silent with this complete understanding amongst them of the incompetency of the judges? It is not a secret — this incompetency. It is useless to pretend, to deny, to ignore. Almost every lawyer acknowledges it and deplores it. Then why not cry out? The answer is simple. The practicing lawyer will not only injure himself in his future practice, but, more important still, on his next appearance in court might injure some innocent client to whom he owes the utmost fidelity. It is given to but few lawyers to be in the position of the writer who has virtually retired from the court practice of his profession.

Eminent Lawyers No Longer Seek Office

"There is yet another angle from which the devastating effects of this system of selection of judges can be viewed; namely, by reason of the lack of force and competency of the majority of these judges, men of high standing and experience in the profession are loathe to seek the place and to become classed with some of the men who occupy the positions of judges of the Supreme Court of this department.

"At this juncture it is only fair to point out that there is not included in this criticism those judges who sit in the Appellate Division. When originally appointed the ablest and most experienced of the judges below were elevated to the Appellate tribunal, and when a vacancy occurs the judges of the Appellate Division are consulted with regard to their future associate whom they recommend as the judge best qualified and best able to assist in the work of the court; and if, by any chance, a weak member of that court has been selected it should be remembered that he is only one of five sitting in each case, and cannot go far astray with four other judges of long experience deliberating on the same case.

Fifty Percent Unfit

"As to the others, returning to the justices below, it will be noted that no names have been mentioned, nor will be. Fifty percent of them, I venture to say, are incompetent and unfit for the positions they occupy. The annual cost to state and city of the judiciary in the First Department is upwards of $2,500,000. Exclusive of rentals of buildings, their upkeep, and so forth. The sum mentioned is the direct expense,

not counting, for a moment, the denials of justice to litigants nor the unnecessary delays by reason of ineffectual trials.

"Although no names are mentioned, if the judges of this department, other than the appellate judges, will assemble and by united request ask for designations, they will be furnished on such request. It is not my purpose to be personal in this article, to injure any individual judge nor to be partisan at any coming election, but to indict the system and point out its defects so that the public may become aware of the gravity of the situation.

The Remedy

"Now as to the remedy! It is vain to exploit and condemn the system without suggesting some remedy. The following have been suggested: (1) Appointment instead of election. Judging from the experiences of the appointments in this department by governors and mayors, such a step would be utterly futile. Appointments so made have kept the level of fitness at the same low state, or made it worse. (2) Another suggestion has been that appointments be made by an elected commission of lawyers. That would hardly be effective as the blighting hand would be laid on the commission. Yet another (3) is the limitation of expenditures at elections, which seems advisable but would hardly go to the root of the evil. (4) An effective method would be by a separate election for judicial offices in which there should be no party emblems, but the candidates named in alphabetical order. *Or* (5) *better still, that before nominations the list of names considered by the parties should be submitted to the Bar Associations for a declaration from them as to fitness and character. Who, better than the members of their own fraternity, knows the worth and merit of a member suggested for promotion to the bench?"*

County Assessor Reminds Attorneys for Estates to File Sworn Statements of Stocks and Bonds for Assessment

PENALTY OF FOUR TIMES THE TAX FOR "FAILURE OR NEGLECT"

Ed. W. Hopkins, County Assessor, has requested the Bar Association to inform its members of the plan adopted by his office of notifying attorneys for estates of the necessity of filing a sworn statement of stocks and bonds between the first Monday in March and the first Monday in July. If not filed on the latter date a "four-times" penalty immediately attaches. For the benefit of all lawyers in Los Angeles County the BULLETIN prints Mr. Hopkins' letter below.

March 2, 1931

Los Angeles Bar Association,
458 So. Spring Street,
Los Angeles, Calif.

Re: Taxation of Estates

Gentlemen:

During the past year much dissatisfaction was caused by reason of the fact that many estates were assessed on stocks and bonds, after the first Monday in July, to which the penalty of four times the amount of the tax was added for "failure or neglect" of the taxpayer, or his representative, to return the same for assessment to the County Assessor, between the first Monday in March and the first Monday in July, upon the sworn statement required by law.

The County Counsel when appealed to advised us that there was no law which would justify the assessor in omitting the penalty under the circumstances.

However, in an effort to aid attorneys, executors, administrators, guardians and trustees, we will hereafter as soon as the Petition for Letters is filed with the County Clerk, check up with our records as far as possible to see whether the taxpayer has returned the statement required by law and if not, a form letter will be sent to the attorney requesting such statement in order that he may protect his client against the penalty.

This practice will be used instead of the former method of waiting until July to give the taxpayer the legal period of time within which to make his return and then assessing such property with the penalty added for "failure or neglect" to return the same for assessment.

While such request is not required by law we feel that the courtesy of being reminded of the necessity to report such property for assessment, between the dates mentioned, in order to avoid the penalty will be appreciated.

Will you kindly transmit the above information to your members.

Yours truly,

ED. W. HOPKINS, *County Assessor*
By F. J. McDevitt, *Deputy.*

"THE MAJESTY OF THE LAW"

"There is a good deal more in the construction of an imposing court house . . . than the mere acquisition of a large and convenient building. . . . The deeper significance of such a structure lies in the fact that it bears witness to the general sense that there is such a thing as 'The Majesty of the Law,' and that it is fitting that the administration of justice should be carried out as far as possible in surroundings which symbolize its august character. And even of greater importance is the fact that such fit and dignified surroundings will react on the general public and give the law itself an added prestige." (—Editorial, American Bar Association Journal.)

What about some "added prestige" in Los Angeles in the form of a new County Court house?

Practice in the Appellate Department of the Superior Court

A CLEAR EXPOSITION OF THE RULES AND THE PROCEDURE. PROMPT HEARING ON APPEALS. FORM OF POINTS AND AUTHORITIES REQUIRED. CONTINUANCES NOT ENCOURAGED. WRITTEN OPINION IN EXCEPTIONAL CASES ONLY

By Edward T. Bishop, Judge of the Superior Court, Los Angeles

The scope of this article is limited by the preposition "in" as appears from the title. No attempt shall be made to mark the paths to be taken to get "to" the Appellate Department. Guide posts for the several routes leading to our jurisdiction may be found in the Penal Code[1], and Code of Civil Procedure[2] as interpreted by the cases[3]. When the record on appeal is once filed in the Superior Court, then the map to be followed is the set of rules adopted by the Judicial Council. As many of these bear the legend "unless otherwise ordered" and in some instances it is otherwise ordered, further directions may be useful. It will aid the traveler to keep to the course in his journey if he bears in mind Gladstone's pronouncement: "Justice delayed is Justice denied," for that is the motto motivating many of our practices.

Our attention to a case begins when the trial court files the record on appeal with us. The county clerk has established a department of his office on the sixteenth floor of the City Hall, with Jerry Williams in charge. To this department go all records on appeal as soon as they are received, and here all papers in connection with appeals should be filed.

Placed on Calendar Without Notice

Appeals no longer await action of counsel to bring them to hearing, but are put on the calendar without motion or notice by the parties. Thursday of each week is our regular calendar day; criminal cases coming in the morning, civil in the afternoon. All appeals in criminal cases received by the clerk before a Saturday noon are placed on the calendar called the following Thursday. All appeals in civil cases filed before Saturday noon of one week are set down for hearing a week from the following Thursday. Post cards are sent out by the clerk notifying counsel of record of the dates of hearing, but this is not official notice. Official notice of the hearing is given by publication of the Thursday calendar in the Los Angeles Daily Journal on the Tuesday and Wednesday preceding. Precaution may dictate that your secretary read our serial each Tuesday whenever you have an appeal coming up for hearing.

Unless your case presents unusual problems, you will be neither required nor permitted to submit it on briefs. Early in our practice we relied upon our notes taken during oral argument, but now in order to insure accuracy, appellants and respondents in every case are required to file points and authorities. (See rule 5) These need not be served and filed prior to the hearing, but courtesy to opposing counsel often results in an exchange of points and authorities a few days before the argument. Lest the meaning of "points and authorities" be mistaken, the rule describes what is required as "a concise statement of the points relied upon and the authorities in support thereof, which shall not include any argument, quotations or excerpts of law or evidence." By way of illustration, a respondent might file these points and authorities.

"I. The sufficiency of the evidence may not be questioned, for the bill of exceptions contains no specification pointing out wherein the evidence is insufficient to sustain the judgment.

Mills v. Brady (1921), 185 Cal. 317
Woolman v. Hammond (1926), 79 Cal. App. 527.

"II. Any error in overruling the motion for a nonsuit was waived by defendant's introduction of evidence curing the defect on which his motion was based.

Lowe v. San Francisco etc. Ry. Co. (1908), 154 Cal. 573.
See page 2, lines 13-26, bill of exceptions.

"III. The municipal court has jurisdiction of an action for damages to real property.

Hooper v. Miley Oil Company (1930), 1 Cal. Sup. p. 62."

Oral Argument Often Waived

As that which is presented by the points and authorities is no more than would be included in oral argument, time to reply is no more required than in case of an oral argument. Occasionally leave is granted to file answering authorities, the time given being usually four days, i. e., until the Monday following the hearing. Oral argument is often waived, the points and authorities sufficiently presenting the position of the parties. If the application of the authorities cited requires exposition, or other reason exists (such as the presence of the client in the court room) oral argument to supplement the points and authorities is heard. We do not ordinarily read over the records before the calendar is called, so when oral argument is made it is helpful to be given some idea of the nature of the case before the argument gets too far along.

Unless circumstances require an order fixing some other time for hearing a motion, it would be noticed for one of our regular calendar days. Matters not rightfully in the record before us but upon which you rely in making your motion, must be presented by affidavit. (Note rule 4, C.C.P. 988b, and O'Connell v. O'Connell (1928) 203 Cal. 541.)

A case once on our calendar remains there until it is submitted for decision. Continuances are not encouraged, are only granted for cause, and stipulation of counsel is not of itself cause. Nor do we regard lack of familiarity with a record that can be read in twenty minutes good cause for a week's delay, if it is still twenty minutes until time for adjournment. Real reasons for continuances do arise, of course, and continuances must be granted, but when granted are for no longer a period than the reason requires.

Immediately after the calendar is heard, both mornings and afternoons, we go into conference on the causes which have been submitted. In those cases where appellant's argument has convinced us the judgment should be affirmed, we immediately check over the record and if we do not find appellant has misled us we at once affirm it. At times as prompt a reversal may be indicated and ordered. If time permits, the shorter records, with points and authorities not too extensive, are gone over and judgment may be given before conference concludes. Action on the other submitted matters is postponed until further study and later conferences.

Written Opinions in Exceptional Cases

The determination in each case is in writing signed by the three members of the department, unless for some reason one does not participate. In a large number of cases, probably a majority, no discussion of the reasons for our decision, nor citation of authority appears. In a number of instances a sentence or two may be inserted indicating the path our reason took to the end reached. In case of a reversal, and in some other cases, a memorandum opinion not designed to be understood by those unfamiliar with the case, but written mainly as a guide to the trial court, will be filed. In exceptional cases only, where the question involved is of more than passing interest, and it seems likely that the higher appellate courts of the state will not furnish guidance, formal opinions are written. These are published as a supplement to the California Appellate Decisions and also appear in the Pacific Reporter, beginning with volume 288. In the eighteen months our department has been functioning it has written not more than thirty formal opinions.

Petition for Rehearing

A petition for a rehearing may be served and filed within seven days after a judgment is rendered, and a reply to the petition may be made within three days after service of the petition. If the petition is granted (and this happens), the cause is restored to the calendar for argument. If the petition is denied (and this happens, too), or if none is filed, a certified copy of our judgment and any opinion rendered is transmitted to the trial court, and our control over the case is at an end. Then it is too late to do more than express the wish that it has had a speedy but fair voyage.

1. Sections 1466-1468.
2. Sections 983-988c.
3. In re Howell (1916), 29 Cal. App. 668.
   Garrett v. Superior Court (1926), 79 Cal. App. 273.
   Lillywhite v. Municipal Court (1926), 80 Cal. App. 533.
   In matter of Bathhurst (1928), 94 Cal. App. 641.
   Hansen v. Municipal Court (1930), 208 Cal. 506.
   Keaton v. Municipal Court (1930), 79 C.D. 168.
   Edmunds v. Hysong (1931), 64 C.A.D. 91.

The Limitations of Pleading Reform

AGITATION FOR SIMPLIFICATION OF PLEADING AND PROCEDURE. MANY MISLED BY THE CRY. WARNING NOT TO EXPECT TOO MUCH FROM SUCH EFFORTS

By Leon R. Yankwich, Judge of the Superior Court, Los Angeles County

A good deal of agitation is going on, as it goes on every odd year prior to the meeting of the California Legislature, about simplification of pleading and procedure. Many liberal thinkers, at the bar, on the bench and among the public, are being misled by the cry. They seem to realize that in the realm of criminal law a good deal of the agitation for reform comes from those desirous of destroying the guarantees which make the glory of the legal system of the English-speaking world. They read history and understand that the Court of the Star Chamber was instituted (during a crime wave, no doubt) in order to dispose of criminal cases without the intervention of a jury and of the orderly legal processes.

> "But," as *Zechariah Chaffee, Jr.*, has pointed out, "the increased efficiency thereby secured was not adequately appreciated by the people at large." (*The Inquiring Mind*, p. 88)

Yet they "fall," in the language of the street, for every reformer who shouts for simplification of civil procedure. A warning is, therefore, necessary not to expect too much from efforts at further simplification in that direction.

To the superficial student, it might seem that civil pleading in California is a difficult thing, which needs further simplifying. The fact is, that while there may be accidences of procedure and pleading in California which could very well be simplified, on the whole, our system of pleading is simple. So simple, in fact, that all that is necessary for a complaint is that it state a cause of action in "ordinary and concise" language. Of course, the statement of a cause of action implies a knowledge of substantive law, and the ability to state the elements,—the relationship, — out of which the cause of action arises, — the right violated or the contract breached. If the statement of some of these requires skill, it is merely because the relationship out of which the cause of action arises is complicated. In a complex world such as ours, it is inevitable that this complexity reflect itself in our pleadings.

Complexities Cannot Be Abolished

Simplify pleadings as you may, you will never abolish these complexities, which are inherent in the "material" out of which a controversy arises. You may state a cause of action for money due (*even if the amount be millions*) in a common count of one sentence. But you cannot, *despite all reforms,* invoke the equity powers of a court unless you state, for the information of the court, the complex facts and special grounds which call for the intervention of a Chancellor. These complexities you cannot abolish by legislative fiat or rule of court. For this reason, some of the extravagant claims now being made on behalf of truncated forms of pleading are bound to prove illusory. It will always require knowledge of substantive law, and the ability to express the facts out of which a right of action arises in ordinary and concise language, — to draft a pleading. That is, unless we are ready to do away with the requirement that a pleading *inform* the opponent of the ground of action or defense. When that is done, we might declare a complaint sufficient if it stated, generally, that a claim in certain amount is made against a defendant. The defendant would then be left to find out, at the trial, what it is all about, *with the aid of an army of clerks, commissioners and others.* Judges would then become mere expert button-pushers, in imitation of some of our numerous executives. But are we ready for this? I, for one, doubt it. Let us not, therefore, place too much hope on mere simplified procedure. Litigation dealing with the complex problems of a complex world will continue to require expert legal knowledge and expert ability of presentation on the part of the lawyer, which no amount of simplification can altogether do away with. The utmost liberality obtains *now* in our pleading. Courts are gradually growing more liberal in interpreting pleadings. It is becoming increasingly easy to "get by" a general demurrer.

The Common Rules of Pleading

At common law, and in many code states, a litigant must stand or fall upon the cause of action his attorney states in the complaint. If he has made a mistake in the remedy he must fail, even if, under the facts, he were entitled to another remedy than the one he chose erroneously.

As it has been put,

> "It was not enough that he stood within the temple of justice, he must have entered through a particular door. Or, to change the figure, chancery, the so-called *officia justitiae,* was like an armory. To it every man who would contend with another in the courts comes to choose his weapon. The choice is large. All the weapons of juridical warfare are here. But every weapon has its propr use, and can be put to no other. Moreover, only one weapon can be chosen at a time; and once chosen, it cannot be exchanged for a different weapon in the progress of the combat. If the fight is to go on, it must be with such a weapon as was first chosen, and according to its special rules. A sword being selected, the rules of sword play must be strictly followed. A crossbow may not be used as a mace. The issue of the combat must not be determined by mere brute force—not even by the brute force of indisputable facts arrayed before the court. It is a contest of skill; success depends upon observing the formal rules of the combat." (*Hepburn*: Development of Code Pleading, No. 46)

In California Relief Not Denied

Not so, in California. With us, the effect of the provision for one form of action is to allow any relief to be granted which is consistent with the facts stated in a complaint. Relief is not to be denied merely because it might have been sought under a different form of action. A plaintiff may recover if his complaint states any cause of action entitling him to any relief at law or in equity.

Conversely put, the California doctrine is that a party cannot be thrown out of court merely because he may have misconceived the form of relief to which he is entitled. A litigant in California may not get *what he prays for.* But he will get what, under the facts, he is entitled to. In a recent article, I have summed up these principles in the following manner:

> "Our courts have sought to carry into effect the objects of the reformed procedure which, from the earliest history of our judicial system, they declared to be 'simplicity and economy.' Procedure, being a means and not an end, the litigant should not be required 'to stand or fall, under all circumstances, by the particular cause of action he intended to plead.' . . . In determining the sufficiency of a litigant's appeal for the intervention of the court in his behalf, under the reformed procedure, it is the part of wisdom, and in consonance with the spirit, and the best juristic thinking of the times, to remember that 'an applicant for justice is not to be turned out of the temple of justice, scourged with costs, because he happened to come in at one door instead of another'." (*The Theory of A Pleading in California,* 8 N.Y.U. L.Q.R., 296-297)

Under these principles, cases are *not* lost through a pleader's mistakes. They are lost because the losing party has *not shown himself entitled to any relief,* under the facts. What else could a litigant ask?

Social Mindedness in Judges

The solution of our legal difficulties lies not so much in reforming procedure, as in reforming the philosophy by which judges and lawyers approach modern problems. Social-mindedness in judges will accomplish what no mere procedural reform can. A socially-minded judge will see in a law suit a means to achieve justice, through law,—*not* a game in which the prize is to go to the more skillful. Elsewhere, I have expressed this thought in the following language:

> "After all Holdsworth is right in saying that 'the law may hinder or it may guide the political and social development of the state; it cannot altogether stop it.'
>
> "And there is no reason why we should not, today, at law, be able to repeat the statement attributed to the Chancellor in the year books: "A man shall not be prejudiced by mispleading or by defects of form, but he shall be judged according to *the truth* of his case."
>
> (2 Southern California Law Review, 357)

This expresses both the ideal and the limitations of procedural reform.

Rehabilitation of Drug Addicts

FACILITIES PROVIDED ON STATE NARCOTIC FARM. FEWER YOUNG PEOPLE AMONG ADDICTS. FORMERLY MANY PATIENTS ESCAPED. GOOD WORK BEING DONE

By Frances N. Ahl

The 1925 Session of the State Legislature of California created a joint committee of the Senate and Assembly "for the purpose of making a thorough, exhaustive study into the narcotic situation in California and recommending measures for the care and rehabilitation of narcotic addicts." The committee served for a period of two years; and, as a result of its findings urged the establishment of a narcotic farm for the segregation and care of all of the addicts of the state that could be apprehended. It advised a farm of sufficient size to take care of from 1,000 to 1,500 drug addicts. Its purpose was three fold, namely: to cure permanently as many addicts as possible; to put the drug peddler out of business by segregating the drug addicts for a long period of time and thus destroying the peddler's market by removing his customers; and to prevent the spread of drug addiction by eliminating the association of drug addicts with other people.

This comprehensive program failed of realization because a large appropriation was necessary to put it into effect. The 1927 Session of the State Legislature enacted into law a substitute bill (Stats. 1927—Chap 89—Approved April 9, 1927) "to provide an institution for the confinement, cure, care and rehabilitation of drug addicts to be known as the state narcotic hospital; to provide for the government and maintenance thereof; to provide for commission and commitment of such addicts, and to prescribe penalties for unlawfully or improperly contriving to have persons adjudged drug addicts under this act; to provide penalties for procuring the escape, or aid or advising in the escape of inmates, or concealing inmates thereof."

Facilities Provided for Treatment

It is under this measure—which carried no appropriation—that the State Hospital at Spadra was opened in August, 1928. For reasons of economy the grounds and buildings of the Pacific Colony for the blind, located about thirty miles east of Los Angeles, are utilized for this institution. The grounds consist of eight hundred acres of rolling land, and the buildings which have been remodeled and equipped are adequate to care for approximately one hundred addicts. Unfortunately, however, the location furnishes neither natural nor artificial barriers against either the escape of the addicts or the smuggling of narcotic drugs from without into the farm. This is a very serious defect. And the result has been that about 100 of the total 400 patients received during the hospital's existence of more than two years, have escaped. Recently a high steel-wire fence has been erected to inclose the forty-two acres used by the narcotic hospital and a complete system of guards, both day and night, has been effected. Thus, escapes have been very materially reduced. Furthermore, through the efforts of Doctor Thomas F. Joyce, Superintendent of the hospital, two helpful pieces of state legislation have been enacted. Today if an addict escapes, he is subject to a term of eight months in the county jail. Or if he violates the rules of the narcotic farm, he may be sentenced to six months in the county jail.

The Narcotic Rehabilitation Act of 1927 defines a drug addict as any person "who habitually takes or otherwise uses any opium, morphine, cocaine or other narcotic drug, except when such taking or use is prescribed by a physician licensed to practice medicine and surgery in this state in the course of his professional practice only." Such person may be arrested and taken before a judge of the Superior Court for a hearing and examination of the charges. If guilty of drug addiction, he may be committed to the hospital for a period of not less than eight months nor more than two years.

While conducting the hearing, the court must investigate the financial condition of the person committed, and decide the extent to which he will pay the expenses of the proceedings in connection with the commitment, the expenses of delivery to the narcotic hospital, and the proper sum to be paid the hospital at stated intervals during the period he may remain there. At the present time, practically no financial aid is received from the eighty-five or ninety patients now in the hospital. The county pays twenty-five dollars a month for the care of each patient it commits. The rest of the expense is met by the state.

Many Patients are Ex-Convicts

Only men patients are received at the narcotic farm at Spadra. The women addicts are registered there and then sent to the state institution at Patton. Ninety-five per cent of the cases committed to the institution had been lost to society before the narcotic home received them. Many of these men are former ex-convicts from San Quentin and Folsom. They were criminal psychopaths, neurotics, frequenters of the underworld or social misfits before they used drugs. Frequently the addict is the offspring of alcoholic parents, the product of a broken home, or the evidence of parental failure. He is not one hundred per cent normal.

A striking thing in regard to the patients handled at Spadra is the fact that nearly twenty-five per cent of them are cases of old people who have taken drugs for forty or fifty years. The other seventy-five per cent range in age from twenty-two to thirty-five years. This situation is in direct contrast to that Doctor Joyce was familiar with in New York state. He finds far fewer cases of drug addiction among the young people of California than among those of New York.

When a new patient arrives at the California State Narcotic Farm, he is given a thorough scientific examination and his case is fully analyzed. For a period varying from seven to ten days, he goes through the treatment room. Each day a small dose of the drug he has previously taken, is administered, but the amount is gradually reduced. During the reduction treatment the patient suffers untold agony. Absolute quiet and proper food are most important at this time, and for the first two weeks that the patient is taken off the drug. Then the chief detail officer assigns him work in the kitchen or the garden or repairing automobiles or doing carpentering, as the case may be; for it is most essential that he be kept busy both physically and mentally. After a period of proper feeding and care, many of the patients have gained from twenty to fifty pounds.

Duration of Treatment

Any time after eight months, the work of rehabilitation apparently accomplished, the patient may be paroled. But outside contact must first be established. Some relative or friend must vouch for the addict; some job must be prepared for him. And for two years following parole, a monthly report must be made to the chief parole officer.

At the present time, there are seventy-five cases on parole. There have been twelve relapses. But the rest of the men are apparently off drugs and have been successfully returned to society. It is always hard to say how permanent the cure is. The majority of relapses come within the first six months or year, but occasionally a relapse occurs after a period of seventeen or eighteen years. "The hardest problem," says Dr. Joyce, "is to sell them back to their relatives and society."

At the main entrance one may be admitted to the hospital by a guard who was a former patient. After having used drugs for forty-five or fifty years, he was apparently cured and paroled. But there was no place in society for him, so he asked to come back to the farm and work for his board and a very nominal sum each month.

The State Narcotic Farm at Spadra has

HOW THE CHICAGO BAR ENDORSES CANDIDATES FOR THE BENCH

"In Chicago, the past presidents of the Bar Association constitute a committee on candidates, whose functions as stated by Mr. Strawn, are to survey the different aspirants for judicial office; summon them before the Committee for interrogation; and prepare a brief summary of the qualifications of each candidate, accompanied by his photograph, which is printed in a pamphlet.

"The pamphlet submitted to the members of the Chicago Bar Association in March, 1930, covering candidates for one county court judgeship, one Probate judgeship and the Chief Justiceship and fourteen associate judgeships of the Municipal Court, contained thirty-two pages, with photographs of each candidate, and very complete information about the candidate's age, education and career, with a statement of the Committee's opinion regarding the reputation and character of the candidate, and his qualification for the office which he sought.

"As a means of enabling the Committee to make up its opinion, there was circulated among the members of the Chicago Bar Association, a ques-

passed through the pioneering and experimental stages, and is doing a splendid piece of work both from the standpoint of humanitarianism and social good. Here, under expert medical guidance and protection, the drug addicts are able to effect a cure. But it is the opinion of both the superintendent, Doctor Thomas F. Joyce, and Doctor Carleton Simon that the facilities of the hospital should be enlarged to take care of at least a thousand patients. Furthermore, the work of the last State Legislature in elevating narcotics to a bureau in the new Department of Penology in the Governor's Cabinet is not enough, for it handles only the problem of enforcement. California, and every other State in the Union that would effectively handle the problem of drug addiction, must have a State Narcotic Commission. This should be composed of expert physicians, and they should be given full power to investigate all cases and make commitments to the State Narcotic Farm. Many a Superior Court judge knows very little, if anything, about drug addiction. Yet, under the present law, it is left entirely in the hands of the judge to classify and segregate the drug addicts.

Increase in the size of the present narcotic hospital, and establishment of such a State Narcotic Commission would materially aid California in handling the narcotic situation, and in the care and rehabilitation of her drug addicts.

BOOK REVIEW

HAMEL'S MANUAL OF BOARD OF TAX APPEALS PRACTICE, by Charles D. Hamel and Edward H. McDermott: Prentice-Hall, Inc., New York; $10.00.

This is a convenient and useful guide through the maze of practice and procedure in cases before the United States Board of Tax Appeals.

As all who have had dealings with technical and specialized government matters, know, there is a vast difference in one's outlook or point of view, depending upon whether you are on the inside looking out, or on the outside looking in. In this work, the authors have fortunately been able to combine the two. Mr. Hamel was the first Chairman of the Board of Tax Appeals, while Mr. McDermott was formerly counsel with the Joint Committee on Internal Revenue Taxation.

After sketching the history of the Board and its relationship to the Bureau of Internal Revenue, the book treats of the various steps in connection with proceedings before the Board, from the framing of the petition, which is the first pleading, through the trial, and then passes to appeals from the decision of the Board of Tax Appeals to the Courts. The second part of this Manual is wholly devoted to questions of Evidence. The wisdom of this is apparent since the Board follows the rules of evidence in the Equity Courts of the District of Columbia, although hearings or trials are held before the Board, or sections of the Board, in session in various parts of the country.

The appendix contains the Rules of the Board, the chapter of the District of Columbia Code on Evidence, and also a number of forms. There are two very full tables of cases, listing respectively Board of Tax Appeals cases and Court cases.

ALBERT E. MARKS.

tionnaire containing the names of the candidates and questions regarding the reputation, legal ability, judicial temperament, capacity and integrity of candidates who had not held judicial office, and, as to candidates who had held such office, questions relating to the conduct of the judge in his office, the opinion of the members of the association as to his ability, and their confidence in his judicial integrity.

"Candidates themselves were also sent questionnaires, and were requested to appear before the Committee, and from the information thus obtained from candidates, and the opinions received from members of the Bar, the biographies and statements of opinion, contained in the pamphlet, were made up.

"Following the circulation of this pamphlet, a ballot was submitted to the members of the Chicago Bar Association, containing the names of the candidates, arranged according to their political parties. Mr. Denning reports that there has never been a case in which the Association approved the candidacy of a candidate concerning whom the Committee had made an unfavorable report." (From the report of the *Committee on Judicial Selection* to American Bar Association, 1930 meeting.)

Review of Legal Education in the United States and Canada for 1930

CARNEGIE FOUNDATION ISSUES REPORT ON SUBJECT OF WIDE INTEREST TO LAWYERS. "THE BULLETIN" PRESENTS SUMMARY ON DAY OF ITS RELEASE FOR PUBLICATION

The question of how rigorous we ought to make our standards for admission to practice law is essentially a political one, that is peculiarly difficult to answer in this country. "On the one hand," declares the Annual Review of Legal Education, published by the Carnegie Foundation for the Advancement of Teaching, "our law is so unusually complicated, and our lawyers' reluctance to ease the burden of legal education by formally dividing their ranks is so deep-seated, that the need for a long and laborious course of professional preparation is even greater than in other lands. On the other hand, here, more than in most countries, public opinion is alive to the importance of ensuring that the legal profession shall not spring predominantly from a socially privileged group, but shall be fairly representative of all social and economic levels."

Responsibility for Inadequate Bar Admission Requirements

An article summarizing the legislation affecting admission to legal practice, now in force in each state, shows that virtually unrestricted power to strengthen requirements for admission to the bar is possessed by the high courts of thirteen states: New Hampshire, Vermont, Rhode Island, and Connecticut, in New England; New Jersey, Pennsylvania, and Delaware, in the Middle Atlantic section; Ohio, Illinois, Minnesota, Colorado, Wyoming, and Oregon, in the Middle West and Far West. The federal courts of the United States, including those of the District of Columbia, have similar control of their own bars. In the remaining thirty-five states, recourse must be had to the legislature to effect substantial improvement, sometimes in the qualifications prescribed for applicants, sometimes in the machinery provided for the enforcement of these requirements, often in both respects.

Occasions for Legislative Action

Three causes are shown to have contributed to the enactment of these widely varying laws. In the first place, "the smoothing out of technical imperfections in the rules for admission to legal practice . . . . is a task which, if undertaken in the spirit of doing for the courts what the courts, for one reason or another, cannot conveniently do for themselves, is most clearly appropriate to a legislative body."

In the second place, "legislation has been invoked to impose a social policy upon the courts." In controversies over the political question of whether standards should be raised or lowered, "one of the contending parties has gone over the head of the courts into the legislature."

Finally, efforts to prevent corporate invasion of the field of legal practice stimulate legislative activity that goes beyond the object sought. "The lawyers, by inviting legislation to confirm them in the privileges which they believe to be rightly theirs, have provided the legislatures with still a third inducement to assume responsibility for the process of admission."

Should Courts or Legislatures Control?

Judicial control has in the past usually produced the best results. A general survey shows that states in which the judges are not hampered by legislative restrictions are likely to have the most advanced rules for admission to the bar. This is partly due, however, to the fact that in an era of advancing standards legislatures move more slowly than courts. "The contrast, moreover, should serve as a warning only against legislation of the wrong sort, that saps freedom of initiative, and substitutes mechanical procedure and formulas for informed responsibility and capacity to march with events. Even courts that have built up

reasonably satisfactory admission systems for themselves may be helped by judicious legislation that does not descend too much into detail. As for states which are embarrassed by statutes providing antiquated machinery and restrictive rules, their prime need is remedial legislation."

Different Types of Law Schools

The revolutionary development of evening or "part-time" law schools, during the past forty years, is reflected in the following figures: Whereas, in 1890 full-time law schools constituted two thirds of the total number of schools, and contained three quarters of the total number of law-school students, in 1930 this type included less than one half of the schools, and approximately one third of the students.

Lengthened Period of Preparation

Simultaneously there has been a striking increase in the number of years that students are obliged to devote to their education in order to secure the law degree. In 1890 an overwhelming majority of the law schools, whether full-time or part-time, required only two years, or less, after the high school. Today, all but 3 of the 82 full-time schools require a total of at least five academic years of college and of law school work, combined, and nearly one-fourth of them require six or seven years. There has been a similar, though less marked, development in the part-time or "mixed" type. "The lengthening of the period for full-time law schools, by making legal education more expensive, has stimulated the demand for part-time law schools; and these, in turn, have moved up as close as they could to the rising full-time standards."

Check in the Growth of Evening Law Schools

During the last ten years, or since the inauguration of the standardizing movement launched by the American Bar Association, the proportion of full-time institutions in the total number of law schools has continued to decrease, but at a much less rapid rate than during any preceding decade. "Attendance at part-time law schools or divisions is adversely affected both by the increased requirements of general education that have been made by the bar admission authorities of several states, and by a nation-wide business depression that bears with especial force upon self-supporting students. It is probable that the combination of these two influences will substantially reduce the number of part-time and 'mixed' schools during the next few years. It is most improbable, however, that this reduction will be so drastic as to undo the work of the preceding generation. Institutions specially designed to serve self-supporting students will continue to be a highly important, and at their best a highly useful, factor in recruiting and training American lawyers."

Current Information

The Review records changes made during the past year in bar admission requirements, and outstanding developments among the law schools. Comparative tables show the present requirements for admission to the bars of each of the sixty states and Canadian provinces, and changes in the number of law schools of different types, and of their students, during the last forty years. The individual schools are listed, with their tuition fees, student attendance, and the time required to complete the course, in par-

allel columns, distinguishing from the 82 full-time law schools of the United States and the 5 full-time law schools of Canada, the 98 part-time or "mixed" schools in this country that offer instruction at hours convenient for self-supporting students, and the 5 Canadian schools in which the students serve a concurrent clerkship in a law office.

PUBLICATIONS DISTRIBUTED WITHOUT COST

An appendix quotes the current standards of the American Bar Association and of the Association of American Law Schools, and lists the publications of the Carnegie Foundation dealing with legal education and cognate matters. Copies of these publications, including the present "Review of Legal Education in the United States and Canada for the Year 1930," may be had without charge upon application by mail or in person to the office of the Foundation, 522 Fifth Avenue, New York City.

BOOK REVIEW

UNFAIR COMPETITION AND TRADE MARKS; (Good Will, Trade Secrets, Interference with and Disparagement of Competitors) By Harry D. Nims, M.A. of the New York Bar: Third edition, 1929, pp. 1293, Baker, Voorhies and Co., New York.

This is the latest edition of a standard work in this field.

Originally the field of "unfair competition" embraced little more than the situation where one manufacturer or merchant sold goods which so nearly resembled the goods of his competitor as to deceive the public into believing that his goods actually were those of the competitor — a typical "palming off" case.

But since Mr. Nims' second edition of this work, published in 1917, a great many changes have taken place. Courts of equity and of law now deal with situations quite apart from a simple case of "palming off" one's goods as the goods of another. Good will, trade names, trade secrets, interference with a competitor's business and contracts, disparagement of rivals and their goods, unfair competition in the use of literary property—all these are now embraced within the field of "unfair competition."

True, this is a branch of law continually developing and changing, and even today, much as these principles have been shaped along advanced lines in order to be at harmony with the realities of the business world, there is still tremendous territory remaining unexplored. The extended scope of the Federal Trade Commission may necessitate complete revision of some of the principles of Unfair Competition.

The two acute problems still remaining unsolved—and of course fundamental, are:

1. What is "unfair"? and

2. What is "competition"?—or need there be any competition between two manufacturers in order to afford one protection from "unfair" tactics of the other? The author injects his advanced views into the text whenever he departs from discussion of decided cases; and far from being objectionable, this method is welcome because Mr. Nims' point of view is generally clear, logical and far-sighted.

This latest work should be entirely acceptable and welcome to any person practicing or writing in this field of "unfair competition."

HARRY GRAHAM BALTER.

SIGNED ARTICLES

THE BULLETIN is an open forum for the full expression of the members of the bar on matters of importance. As the widest range of opinion is necessary in order that different aspects of such matters may be presented, the Committee having charge of the publication of the Bulletin assumes no responsibility for the opinions in signed articles, except to the extent of expressing the views, by the fact of publication. that the subject treated is one which merits attention.